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2 **IN THE DISTRICT COURT OF THE VIRGIN ISLANDS**
3

4 **DIVISION OF ST. THOMAS AND ST. JOHN**
5

6 WILLIAM LONNIE MOFFITT and MARY
7 JOYCE MOFFITT,
8

9 Plaintiffs,
10

11 v.
12

13 VARLACK VENTURES, INC., HOLLIS B
14 CORP, J QUEST CORP, T.K. SAILING
15 CORP dba NEW HORIZONS CHARTERS,
16

17 Defendants.
18

19 **CIVIL CASE NO. 3:15-cv-00082**
20 **COMPLAINT FOR DAMAGES**
21 **JURY TRIAL DEMANDED**
22

23 Plaintiffs, WILLIAM LONNIE MOFFITT and MARY JOYCE MOFFITT, hereby alleges
24 as follows:

25 **ALLEGATIONS COMMON TO ALL CAUSES OF ACTION**

26 **I.**

27 **JURISDICTION**

28 1. Plaintiffs, WILLIAM LONNIE MOFFITT and MARY JOYCE MOFFITT, are
29 residents of the City of Friendship, State of Texas.

30 2. Plaintiffs are informed and believe, and based thereupon allege, that Defendant,
31 VARLACK VENTURES, INC., is a Virgin Islands corporation and is doing business within the
32 Territory of the United States Virgin Islands, and, at all times herein mentioned, was the owner,
33 operator and entity responsible for the ownership, operation and control of the M/V Capital Venture,
34 a 96 ton, 105 foot passenger ferry, ship number 643732.

35 3. Plaintiffs are informed and believe, and based thereupon allege, that Defendants,
36 HOLLIS B CORP, J QUEST CORP, T.K. SAILING CORP dba NEW HORIZONS CHARTERS,
37 are Virgin Islands corporations and are doing business within the Territory of the United States

1 Virgin Islands, and, at all times herein mentioned, were the owners, operator and others responsible
2 for the ownership, operation and control of the M/Y New Horizons, a 43 ton, 65 foot sailing vessel,
3 ship number 953206.

4 4. The citizenship of Plaintiffs and Defendants is diverse and the amount in controversy,
5 exclusive of interests and costs, exceeds the sum of Seventy-Five Thousand Dollars (\$75,000.00).
6 Therefore, this Court has jurisdiction over the matter pursuant to 28. U.S.C. § 1332.

III.

FIRST CAUSE OF ACTION
**(WILLIAM LONNIE MOFFITT and MARY JOYCE MOFFITT vs. VARLACK
VENTURES, INC.)**

10 5. Plaintiffs reallege paragraphs 1 through 4, and incorporates the same by reference as
11 though fully set forth herein.

12 6. Plaintiffs are informed and believe, and based thereupon alleges, that Defendants,
13 VARLACK VENTURES, INC., at all times relevant hereto, are, and were, the owners and operators
14 of the M/V Capital Venture, a passenger ferry operating between the St. Thomas and St. John, in
15 the Territorial waters of the United States Virgin Islands.

16 7. On or about October 22, 2014, at or near 6:00 p.m., Plaintiffs, WILLIAM LONNIE
17 MOFFITT and MARY JOYCE MOFFITT were passengers on the M/Y New Horizons, which had
18 left for a sunset cruise from Sapphire Beach Marina on St. Thomas, Virgin Islands and was operating
19 in Pillsbury Sound. The vessel M/Y New Horizons was being operated under power and the sails
20 were not raised.

21 8. At that time and place, the M/V Capital Venture had departed from Red Hook and
22 was traveling to St. John. At approximately 0.5 NM East of the Red Hook Channel Entrance Buoys
23 the M/V Capital Venture collided with the port stern of the M/Y New Horizons. Plaintiffs WILLIAM
24 LONNIE MOFFITT and MARY JOYCE MOFFITT were seated on the port stern side of the M/Y
25 New Horizons and sustained injuries and damages during the collision.

26 9. Plaintiffs are informed and believe, and based thereupon allege, that at all times herein
27 mentioned, Defendant, VARLACK VENTURES, INC., as the owner and operator of the M/V
28 Capital Venture was the employer of the captain/master of the vessel and responsible for the

1 operation and control of the vessel while under way.

2 10. Plaintiffs are informed and believe, and based thereupon allege, that at all times herein
3 mentioned, Defendants, VARLACK VENTURES, INC., were required to operate their vessel in
4 accordance with the standard of care and in compliance with the navigation rules and regulations as
5 promulgated by the U.S. Department of Transportation, United States Coast Guard, which include,
6 but are not limited to, the following provisions:

7 Rule 6:Safe speed. Every vessel shall at all times proceed at a safe speed so that she can take
8 proper and effective action to avoid collision and be stopped within a distance appropriate
9 to the prevailing circumstances and conditions.

10 Rule 7: Risk of Collision. Every vessel shall use all available means appropriate to the
11 prevailing circumstances and condition to determine if risk of collision exists. If there is any
12 doubt such risk shall be deemed to exist.

13 Rule 8: Action to Avoid Collision. Any action taken to avoid collision shall, if the
14 circumstances of the case admit, be positive, made in ample time and with due regard to the
15 observance of good seamanship.

16 Rule 13: Overtaking. [A]ny vessel overtaking any other shall keep out of the way of the
17 vessel being overtaken. A vessel shall be deemed to be overtaking when coming up with her
18 vessel from a direction more than 22.5 degrees abaft her beam, that is, in such a position with
19 reference to the vessel she is overtaking, that at night she would be able to see only the stern
20 lights of the vessel but neither of her sidelights.

21 Rule 16: Action by Give-way Vessel. Every vessel which is directed to keep out of the way
22 of another vessel shall, so far as possible, take early and substantial action to keep well clear.

23 Rule 18: Responsibilities Between Vessels. Except where Rules 9, 10 and 13 otherwise
24 require. . . .(iv) a sailing vessel.

25 11. Plaintiffs are informed and believe, and based thereupon allege, that the
26 captain/master of the M/V Capital Venture was negligent and careless in the operation of the M/V
27 Capital Venture by violating one or more of the above referenced Navigation rules and otherwise
28 conducting himself in a manner below the standard of care of a master operating a passenger ferry.

1 12. Plaintiffs are informed and believe, and based thereupon allege, that a direct and
2 proximate result of the negligence and careless of Defendant, VARLACK VENTURES, INC., by
3 and through the captain/master of the M/V Capital Venture, Plaintiffs sustained injuries and
4 damages, as herein alleged.

5 13. As a direct and proximate result of the negligence of Defendant, as hereinabove
6 alleged, Plaintiffs, WILLIAM LONNIE MOFFITT and MARY JOYCE MOFFITT, , were hurt and
7 injured in their health, strength and activity, in all parts of their body, and sustained shock and injury
8 to their nervous system and person, all of which injuries have caused and continue to cause Plaintiffs
9 great mental, physical and nervous anxiety, and pain and suffering. Plaintiffs, WILLIAM LONNIE
10 MOFFITT and MARY JOYCE MOFFITT, are informed and believe, and thereon allege, that these
11 injuries will result in some permanent disability to Plaintiffs, all to their general damage, in an
12 amount to be proven at time of trial.

13 14. As a further direct and proximate result of the negligence of Defendant as hereinabove
14 alleged, Plaintiff, WILLIAM LONNIE MOFFITT and MARY JOYCE MOFFITT, were required to,
15 and did, employ physicians, surgeons and therapists to treat and care for them, and did sustain
16 expenses for such medical treatment and care, hospitalization, medicine, and for other and further
17 medical and incidental care, for which Plaintiffs have incurred liability in an amount as yet
18 unascertained. Plaintiffs, WILLIAM LONNIE MOFFITT and MARY JOYCE MOFFITT, pray
19 leave of Court to amend and/or supplement this Complaint to insert the actual and reasonable value
20 of all medical and incidental expenses when same have been ascertained, or to prove same at time
21 of trial.

22 15. Plaintiffs, WILLIAM LONNIE MOFFITT and MARY JOYCE MOFFITT, are
23 informed and believe, and based thereupon allege, that as a further direct and proximate result of the
24 negligence of Defendant, as hereinabove alleged, they will necessarily require additional medical
25 care, hospitalization, medicines, and other and further medical attention in the future and will incur
26 liability therefrom. Plaintiffs, WILLIAM LONNIE MOFFITT and MARY JOYCE MOFFITT, pray
27 leave of Court to amend and/or supplement this Complaint to insert the actual and reasonable value
28 of all such additional medical and incidental expenses when same have been ascertained, or to prove

same at time of trial.

16. As a further direct and proximate result of the negligence of Defendant, as hereinabove alleged, Plaintiffs, WILLIAM LONNIE MOFFITT and MARY JOYCE MOFFITT, became incapacitated and was prevented from following their usual occupation for an undetermined period of time; and as a result thereof, Plaintiffs suffered a loss of earnings and earning capacity and ability and other financial losses in an undetermined amount. Plaintiffs, WILLIAM LONNIE MOFFITT and MARY JOYCE MOFFITT, pray leave of Court to amend and/or supplement this Complaint to include the exact amount of said loss of earnings and earning capacity and ability when ascertained, or to prove same at time of trial.

III.

SECOND CAUSE OF ACTION

WILLIAM LONNIE MOFFITT, MARY JOYCE MOFFITT vs. HOLLIS B CORP, et al.)

17. Plaintiffs reallege paragraphs 1 through 16, and incorporates the same by reference as a part hereof as though fully set forth herein.

15 18. Plaintiffs are informed and believe, and based thereupon allege, that at all times herein
16 mentioned, Defendants, HOLLIS B CORP, J QUEST CORP, T.K. SAILING CORP dba NEW
17 HORIZONS CHARTERS, as the owner and operator of the M/Y New Horizons were the employers
18 of the captain/master of the vessel and responsible for the operation and control of the vessel while
19 under way.

20 19. Plaintiffs are informed and believe, and based thereupon allege, that at all times herein
21 mentioned, Defendants, HOLLIS B CORP, J QUEST CORP, T.K. SAILING CORP dba NEW
22 HORIZONS CHARTERS, were required to operate their vessel in accordance with the standard of
23 care and in compliance with the navigation rules and regulations as promulgated by the U.S.
24 Department of Transportation, United States Coast Guard, which include, but are not limited to, the
25 following provisions:

26 Rule 6:Safe speed. Every vessel shall at all times proceed at a safe speed so that she can take
27 proper and effective action to avoid collision and be stopped within a distance appropriate
28 to the prevailing circumstances and conditions.

1 Rule 7: Risk of Collision. Every vessel shall use all available means appropriate to the
2 prevailing circumstances and condition to determine if risk of collision exists. If there is any
3 doubt such risk shall be deemed to exist.

4 Rule 8: Action to Avoid Collision. Any action taken to avoid collision shall, if the
5 circumstances of the case admit, be positive, made in ample time and with due regard to the
6 observance of good seamanship.

7 Rule 17: Action by Stand-on Vessel.

8 (a) Where one of two vessel is to keep out of the way of the other shall keep her course and
9 speed. The later vessel may however take action to avoid collision by her maneuver alone,
10 as soon as it becomes apparent to her that the vessel required to keep out of the way is not
11 taking the appropriate action in compliance with these Rules.

12 (b) When, from any cause, the vessel required to keep her course and speed finds herself so
13 close that a collision cannot be avoided by the action of the give-way vessel alone, she shall
14 take such action as will best aid to avoid collision.

15 20. Plaintiffs are informed and believe, and based thereupon allege, that the
16 captain/master of the M/Y New Horizons was negligent and careless in the operation of the M/Y
17 New Horizons by violating one or more of the above referenced Navigation rules and otherwise
18 conducting himself in a manner below the standard of care of a master operating a sailing vessel
19 under power.

20 21. Plaintiffs are informed and believe, and based thereupon allege, that a direct and
21 proximate result of the negligence and careless of Defendants, HOLLIS B CORP, J QUEST CORP,
22 T.K. SAILING CORP dba NEW HORIZONS CHARTERS, by and through the captain/master of
23 the M/Y New Horizons, Plaintiffs sustained injuries and damages, as herein alleged.

24 22. As a direct and proximate result of the negligence of Defendants, as hereinabove
25 alleged, Plaintiffs, WILLIAM LONNIE MOFFITT and MARY JOYCE MOFFITT, were hurt and
26 injured in their health, strength and activity, in all parts of their body, and sustained shock and injury
27 to their nervous system and person, all of which injuries have caused and continue to cause Plaintiffs
28 great mental, physical and nervous anxiety, and pain and suffering. Plaintiffs, WILLIAM LONNIE

1 MOFFITT and MARY JOYCE MOFFITT, are informed and believe, and thereon allege, that these
2 injuries will result in some permanent disability to Plaintiffs, all to their general damage, in an
3 amount to be proven at time of trial.

4 23. As a further direct and proximate result of the negligence of Defendants, as
5 hereinabove alleged, Plaintiff, WILLIAM LONNIE MOFFITT and MARY JOYCE MOFFITT, were
6 required to, and did, employ physicians, surgeons and therapists to treat and care for them, and did
7 sustain expenses for such medical treatment and care, hospitalization, medicine, and for other and
8 further medical and incidental care, for which Plaintiffs have incurred liability in an amount as yet
9 unascertained. Plaintiffs, WILLIAM LONNIE MOFFITT and MARY JOYCE MOFFITT, pray
10 leave of Court to amend and/or supplement this Complaint to insert the actual and reasonable value
11 of all medical and incidental expenses when same have been ascertained, or to prove same at time
12 of trial.

13 24. Plaintiffs, WILLIAM LONNIE MOFFITT and MARY JOYCE MOFFITT, are
14 informed and believe, and based thereupon allege, that as a further direct and proximate result of the
15 negligence of Defendants, as hereinabove alleged, they will necessarily require additional medical
16 care, hospitalization, medicines, and other and further medical attention in the future and will incur
17 liability therefrom. Plaintiffs, WILLIAM LONNIE MOFFITT and MARY JOYCE MOFFITT, pray
18 leave of Court to amend and/or supplement this Complaint to insert the actual and reasonable value
19 of all such additional medical and incidental expenses when same have been ascertained, or to prove
20 same at time of trial.

21 25. As a further direct and proximate result of the negligence of Defendants, as
22 hereinabove alleged, Plaintiffs, WILLIAM LONNIE MOFFITT and MARY JOYCE MOFFITT,
23 became incapacitated and was prevented from following their usual occupation for an undetermined
24 period of time; and as a result thereof, Plaintiffs suffered a loss of earnings and earning capacity and
25 ability and other financial losses in an undetermined amount. Plaintiffs, WILLIAM LONNIE
26 MOFFITT and MARY JOYCE MOFFITT, pray leave of Court to amend and/or supplement this
27 Complaint to include the exact amount of said loss of earnings and earning capacity and ability when
28 ascertained, or to prove same at time of trial.

1 WHEREFORE, Plaintiffs prays judgment against Defendants, and each of the, as follows:

- 2 1. For general damages, all in an amount in excess of \$75,000 and to be proven at the
3 time of trial;
- 4 2. For medical and related expenses, past, present and future, all in an amount to be
5 proven at the time of trial;
- 6 3. For loss of earnings or earning ability, past, present and future, all in an amount to be
7 proven at the time of trial;
- 8 4. For costs of suit incurred herein; and
- 9 5. For such other and further relief as this Court deems just and proper.

10 Dated : October 14, 2016

LAW OFFICES OF FRIEDBERG & BUNGE

11 By: s/ THOMAS F. FRIEDBERG, ESQ.

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18 **DEMAND FOR JURY**

19 Plaintiffs hereby demand a jury trial pursuant to Rule 38, of the Federal Rules of Practice.

20 Dated : October 14, 2016

LAW OFFICES OF FRIEDBERG & BUNGE

22 By: s/ THOMAS F. FRIEDBERG, ESQ.

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